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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-seventh session

SUMMARY RECORD OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24th August 1995, at 10 a.m.

Chairman: Mr. EIDE

later: Mr. HAKIM

later: Mr. GUISSE

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GE.95-14176 (E)

The meeting was called to order at 10.15 a.m.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 14) (continued) (E/CN.4/Sub.2/1995/24, 25, 26 and 27; E/CN.4/Sub.2/1995/NGO/14; E/CN.4/Sub.2/1994/2 and Add.1)

1. Mr. BOUTKEVITCH said he believed that the time had come to extend the functions of the Working Group on Indigenous Populations to include consideration of a change in the agenda and to find the most effective way to make use of work done by other United Nations bodies on standards concerning indigenous peoples. Later on, the question would arise as to the need for a convention on indigenous peoples.

2. He welcomed the final report of the Special Rapporteur, Mrs. Daes, on protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/26); the report demonstrated a high degree of professional capability. He had studied it critically, particularly the annex containing the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples.

3. Paragraph 2 of the annex stated that, to be effective, the protection of indigenous peoples' heritage should be based broadly on the principle of self-determination. He was curious as to why only the principle of self-determination was required. Other principles of international law should also be recognized. The same paragraph proposed that such protection should include not only the right but also the duty of indigenous peoples to develop their own cultures, knowledge systems and forms of social organization. Paragraph 3 might also say that the heritage of indigenous peoples should be regarded not only as their property but also as part of the heritage of mankind; that was an additional reason why they should be preserved.

4. Paragraph 7 might contain clearer wording on the obligations of States to help monitor preservation of the heritage. The suggestions contained in the paragraphs relating to transmission of heritage should be implemented.

5. The problem of definition was very important. The Working Group had considered a definition of indigenous and national minorities although lawyers had said that definitions would be dangerous in so far as they might be accurate currently but not later on when the situation might have changed. The result could be violations of the current order. He agreed, however, with the working definitions contained in paragraphs 11, 12 and 13 of the annex.

6. He considered that the report and particularly the annex should be made widely available to the general public.

7. Mr. Hakim took the Chair.

8. Mr. EIDE said that he had studied with great attention the report of the Working Group on Indigenous Populations on its thirteenth session (E/CN.4/Sub.2/1995/24), the final report of the Special Rapporteur, Mrs. Daes, on the protection of the heritage of indigenous people (E/CN.4/Sub.2/1995/26) and the second progress report by the Special

Rapporteur, Mr. Alfonso Martinez, on the significance of treaties, agreements and other constructive arrangements between indigenous peoples and States throughout the world (E/CN.4/Sub.2/1995/27).

9. He appreciated the plans for the further work of the Working Group, including possible standard-setting. He would suggest, however, that the analytical review of the articles in the draft United Nations declaration on the rights of indigenous peoples should be suspended until the Commission had completed its own work, since there would obviously be some changes. He also greatly appreciated the work done by Denmark in advancing the plans for a permanent forum for indigenous peoples, an idea brought to the World Conference on Human Rights by a member of the Greenland Home Rule Government. He noted with pleasure the success of the workshop which had been held in Copenhagen.

10. One issue discussed at the thirteenth session of the Working Group had been that of the definition of indigenous peoples, an issue which was becoming increasingly pressing. In that connection, he had noted the very thoughtful comments on the subject by Mr. Bengoa in paragraphs 45-50 of the report on the thirteenth session of the Working Group. There was a need for a combination of self-identification and objective factors. Two issues were involved, namely, whether a given group was indigenous or not, which would determine whether they could benefit from the rights under the declaration and other instruments, and whether a particular individual had a right to belong to that group, including in cases when the group wanted to exclude that person from the relevant rights, as in the Lovelace case. Any person who did not want to be part of the group must, however, be entitled not to be so; that aspect had not been reflected sufficiently in the draft declaration as it stood.

11. Self-identification alone was therefore not enough but objective criteria must not be discriminatory in their application. Whether a formal definition was required or not depended on the scope of the rights given to the indigenous. A particularly difficult issue was that of the alleged right to self-determination which was in itself an ambiguous concept.

12. It had to be borne in mind that the draft declaration in its current form and the draft Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples constituted what might be called the maximalist demands in that they had been profoundly influenced by the aspirations of the indigenous themselves. The draft declaration would now go to the Commission where it would be necessary to take into account the other side of the coin.

13. Practically all indigenous peoples currently lived within sovereign States and the general principles of international law came into play, including the territorial integrity and political independence of States. Governments had to take into account the concerns of all groups or peoples living within their territory. As Mrs. Daes had frequently pointed out, the indigenous had often not been part of the social contract in society; the role of the declaration in its final version would be to ensure that the concerns of the indigenous were taken fully into account.

14. On the other hand, it had to be accepted that Governments must also ensure, on an equal basis, the rights of all others in their society without

any discrimination. That had been expressly stated in article 2 of the International Covenant on Civil and Political Rights and was a general obligation under international human rights law. Consequently, States would in the future be obliged to ensure that persons living within indigenous communities enjoyed their universal human rights.

15. One particularly difficult issue which had caused great problems with regard to the definition of indigenous populations or peoples was the concept of self-determination. The content of the right to self-determination was different in different situations. Claims of self-determination had been made mainly in three categories of situations. First, there was the situation of non-self-governing territories, including occupied territories; second, there was the situation of independent countries where the population for some reason was unable to govern itself; and third, there was the situation in parts of a territory of a sovereign State where an ethnic group challenged the legitimacy of the central Government to exercise authority over that group. There was virtually universal consensus that the population of non-self-governing and occupied territories had a right to self-determination; the main content of the right was to determine the political status of the territory as a whole. In such cases, the beneficiary of the right was the population of the territory as a whole. The integrity of the territory must be respected; the right to self-determination therefore did not give separate parts of the population of any part of the non-self-governing territory a right to break out of the territory; if the territory was to be divided it must be on the basis of agreement between the constituent groups of the population.

16. There was a broadening consensus that the population in every independent country had a right to self-determination; the content of that right was to be able to determine the economic, social and cultural development of the country concerned. That meant that the population must have an effective democratic system of governance where all parts of the population participated. It must be emphasized that the beneficiary of that right was the people as a whole, meaning that members of the different ethnic, religious, linguistic and other groups must be allowed to participate without discrimination in the Government of their country and that no part of the population could demand to govern alone. There was on the other hand very little support in international law for claims by separate ethnic, linguistic or religious groups inside sovereign States to secede from the territory of the sovereign States. Such claims were generally held to be invalid except under extreme circumstances. There was, however, some support for claims made by indigenous peoples for a right to some form of autonomy within the sovereign State. The scope and modalities remained vague, however, and further discourse within international law would be required before its content could become clear.

17. The 1993 Vienna Declaration and Programme of Action had dealt with self-determination in its article 2 when it had recognized and endorsed the right of all peoples to self-determination. The principle of territorial integrity and political unity of existing sovereign and independent States excluding the right to secession had been reconfirmed by the Vienna Declaration.

18. Article 2, paragraph 1, of the Vienna Declaration was a verbatim restatement of article 1, paragraph 1, of the International Covenants on Human Rights and left open all the ambiguities of that article, including a definition of who constituted the people and what did the people have a right to. Article 2, paragraph 2, defined the people as the population as a whole living in a non-self-governing territory or in an occupied territory. The people was defined by the territory in which the population lived, not by the ethnicity, language or religion of the different groups which constituted the population. That became clear when looked at in the light of United Nations practice. Article 2, paragraph 3, of the Vienna Declaration excluded the use of the right to self-determination as a basis for secession. That point had already been made in paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Vienna formulation however had added that the State must conduct itself in compliance with the principle of equal rights and self-determination of peoples by being possessed of a Government representing the whole people belonging to the territory without distinction of any kind. The Vienna formulation therefore did not imply that the people of an independent State did not have a right to self-determination. What it did mean was that their rights to self-determination consisted of a right to have an inclusive, representative and democratic Government which, on behalf of the population as a whole, could freely pursue the economic, social and cultural development of the country as a whole. The political status of the territory had already been settled when it had become a sovereign, independent State. The right to self-determination for the people of a sovereign State was a right to democracy and respect for human rights.

19. When paragraphs 2 and 3 of article 2 of the Vienna Declaration and Programme of Action were compared, the basic distinction became apparent. There was, on the one hand, a right to self-determination for non-self-governing territories which included a right to independence for the territory as a whole; on the other hand, there was a clear statement of non-applicability of that right as a basis for dismembering the territorial integrity of sovereign States, provided they had a Government representing the whole people belonging to the territory of that sovereign State.

20. The World Conference on Human Rights had emphasized the importance of continued promotion and protection of the right of indigenous groups. All the indigenous representatives had preferred the term "indigenous peoples" but the term used in article 20 of the Vienna Declaration was "indigenous people". The main point had been to exclude the possibility that, by calling the indigenous groups peoples, they would claim to have an unqualified right to self-determination.

21. The problem to be faced was that the notion of an indigenous people had an ethnic, rather than a territorial connotation. It opened up the possibility that the right to self-determination had been given to the ethnic group as such, rather than to the population as a whole of a given territory. When that was applied to other situations, the consequences could be terrible, as evidenced by the current situations in Transcaucasus and in former Yugoslavia. Caution was therefore required and appropriate forms of group accommodation must be sought.

22. In relation to indigenous peoples, however, the right to self-determination was normally not understood to be a right to an independent State but rather to some limited form of autonomy on ethnic grounds. The word "self-determination" was used in that sense, for example, in United States legislation.

23. In the draft United Nations declaration on the rights of indigenous peoples, the term "right to self-determination" in article 3, when read in conjunction with draft article 4, was apparently also intended to provide for a right to autonomy short of independence. Thus, in spite of the use of the word "self-determination", the indigenous people was assumed to remain within the existing sovereign State, nevertheless a degree of autonomy was required should they be able to preserve their political, economic and cultural characteristics. That was also apparent from a number of other provisions in the draft, including article 16, according to which States must take "effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society". That corresponded to the general desire of the indigenous people. The right to self-determination of indigenous peoples must therefore be understood to mean some form of autonomy. In practice, the degree and nature of autonomy must be negotiated with the authorities of the State; the outcome was likely to be different in the various societies where indigenous peoples formed a part. The key elements that should guide the negotiations should be sought in the declaration on the rights of indigenous peoples when it was adopted; prior to that, the terms of ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) might be of help.

24. He wondered, however, whether the word self-determination was a good one to reflect that aspiration. He believed that the declaration would have a better future if a different set of words was used and a sweeping general concept avoided. Practically useful concepts might be applied in the different parts of the declaration, such as functional autonomy when that was intended, and territorial self-government where that was the intention. Concepts which were too general and too ambiguous could do more harm than good.

25. Mrs. WARZAZI suggested that the number of meetings allocated to the Working Group should be increased to enable it to consider the issue of definition in greater depth.

26. She also considered that the report of the Special Rapporteur on protection of the heritage of indigenous people (E/CN.4/Sub.2/1995/26) should be given the widest possible public dissemination.

27. She regretted that restrictions of time had prevented the Sub-Commission from considering the second report on treaties, conventions and other constructive agreements between States and indigenous populations prepared by the Special Rapporteur, Mr. Alfonso Martínez (E/CN.4/Sub.2/1995/27). It was clear that a study of such a wide-ranging nature had called for in-depth studies everywhere where there were indigenous populations; such a task could not be accomplished in two or three years. She therefore believed that the Special Rapporteur should be given every possible assistance and the time

necessary to complete his study which was based on scientific information and confidential documents not easily accessible previously. Mr. Alfonso Martínez had discovered the existence of a great diversity of peoples and territories which, after a period of colonization, had led to the development of a substantial number of multi-ethnic and multinational States in the Asian and African continents.

28. She supported the recommendations of the Special Rapporteur and congratulated him on having been able to submit his report to the current session notwithstanding health problems.

29. Mr. BENGOA proposed that greater time should be devoted to the issue of discrimination against indigenous peoples at the Sub-Commission's session in 1996 so that the issues relating to the item could be studied in greater depth.

30. Mr. Hatano had made a valuable contribution when he had proposed that more time should be devoted to the issue of defining what was meant by indigenous peoples. Such a discussion would make it possible to resolve one of the most controversial issues in the current discussion concerning appropriate nomenclature; there were some who believed that such groups should be called populations and others preferred indigenous peoples. The future of the draft declaration which had been submitted for consideration by the Commission on Human Rights would be greatly influenced by the decision reached.

31. He welcomed the excellent study by Mr. Alfonso Martínez (E/CN.4/Sub.2/1995/27) who had drawn the attention of the Sub-Commission to the vicissitudes he had encountered as an investigator and had devoted considerable effort to the difficult issue of definitions. The Special Rapporteur had made considerable progress towards developing a technical definition of the term indigenous peoples. In another part of the report which was of great historical interest he had formulated a broad macrotheory of the history of colonization and colonialism and had drawn attention to differences in forms of colonization according to the particular colonizing country. He therefore considered it important that the Special Rapporteur should continue his study in other continents in accordance with his work plan.

32. The study by Mrs. Daes on the protection of the heritage of indigenous peoples was of great importance and should be considered by the members of the Sub-Commission as a major item. The requisite amount of time at the next session should be devoted to her study so that it could be discussed in depth.

33. Mr. Guissé took the Chair.

34. Mr. HAKIM said that the final report of the Special Rapporteur on protection of the heritage of indigenous people should be made available to the public.

35. He would like to refer to articles 3, 4 and 16 of the draft United Nations declaration on the rights of indigenous peoples agreed upon by the members of the Working Group at its eleventh session as they contained

many implications for indigenous peoples. Greater attention should be paid to the need to study the use made by indigenous peoples of such resources as local harbours, trees and roots. It had been shown that even the most highly developed countries scientifically were beginning to turn back to trees and roots as remedies for incurable diseases such as cancer. In the United States areas had been set aside for trees for the specific purpose of developing a cancer cure. Those aspects of the heritage of indigenous people merited further study.

36. On the issue of autonomy, he considered that autonomy should always be granted to indigenous peoples. It was not for others to decide on the issue but for the indigenous peoples themselves. Autonomy would enable them to lead their own lives and follow their customary ways.

37. He would also like to say that he greatly appreciated the work done by Denmark in advancing the plans for a permanent forum for indigenous peoples. He would also like to thank Mr. Hatano for the great help which he had given to Mrs. Daes and Mr. Alfonso Martínez; Mr. Hatano would be leaving for Lapland shortly to study the habits of the indigenous peoples living there.

38. Mrs. DAES, Special Rapporteur, said that she wished to thank members for their contributions to her work, particularly Mr. Boutkevitch, Mr. Eide, Mrs. Warzazi, Mr. Bengoa and Mr. Hakim as well as the indigenous organizations themselves and the representatives of a number of Governments including New Zealand, Colombia and Peru.

39. Mr. Eide in particular had dealt with the concept of self-determination as a very complex and important concept of international law including international human rights law. She herself had analysed that concept with particular reference to the concepts of territorial integrity and sovereignty.

40. The draft United Nations declaration on the rights of indigenous peoples was now before the new Working Group established by the Commission on Human Rights. She invited members of the Commission to make their own contribution to development of the concepts included in the draft declaration.

41. Mr. ALFONSO MARTINEZ, Special Rapporteur, said that Mrs. Daes's fine report on protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/26) had many ramifications and some of the areas she had touched upon deserved fuller study. His own second progress report concerning the study on treaties, agreements and other constructive arrangements between indigenous populations and Governments (E/CN.4/Sub.2/1995/27) also could benefit from further discussion in the Sub-Commission.

42. Mr. RICARTE (Observer for Brazil) said that his delegation had followed with particular interest the discussions in the Working Group on Indigenous Populations on the possible definition of indigenous people, bearing in mind the different interpretations the notion was given in various legal regimes and traditions. Such a definition might be useful to the intersessional working group established by the Commission to draft a declaration on the rights of indigenous peoples.

43. The Sub-Commission's Working Group would be playing an important part in the follow-up to the activities held in connection with the International Decade of the World's Indigenous People, by providing a forum for evaluating the action taken by the United Nations system, reviewing information volunteered by Governments on their own activities, and making further plans. It would be important for the success of the Decade to bring the report of the recent Technical Meeting to the attention of Governments, so that they could make recommendations to the Secretary-General for inclusion in his report, as requested in General Assembly resolution 49/214.

44. Brazil had taken note of the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples presented in annex to the Special Rapporteur's final report (E/CN.4/Sub.2/1995/26) and suggested that they should be expanded to take into account recent developments in other bodies: the United Nations Food and Agricultural Organization (FAO), for instance, was currently discussing farmers' rights, and there were international discussions regarding the protection of traditional knowledge and lifestyles in the context of the Convention on Biological Diversity and the United Nations Convention to Combat Desertification, and others regarding intellectual property rights. In addition, more information from Governments and inter-governmental organizations would be useful for the drafting of effective national regulations to enforce the rights of indigenous people and for a fuller international debate on the matter. Further research on the protection of the cultural heritage might assist the States parties to the Convention on Biological Diversity when they met at their Third Conference to consider the implementation of article 8 (j) of the Convention. Lastly, Brazil hoped that Mr. Alfonso Martínez would soon be able to complete his study.

Statements equivalent to a right of reply

45. Mr. QUAYES (Observer for Bangladesh), referring to comments made by the representative of the International Movement Against all Forms of Discrimination and Racism (IMADR), said that he wished first to welcome that non-governmental organization's acceptance of his Government's invitation to visit the country, and also endorsed its view that the term "indigenous" needed better definition. Bangladesh had consistently argued in the Working Group that a definition would be crucial in determining the scope of any declaration on the matter.

46. Groups identifying themselves as indigenous were allowed to attend the sessions of the Working Group, but that did not necessarily confer indigenous status on them. Some, for instance, were merely minorities, or tribal rather than indigenous groups, a distinction drawn by the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) IMADR had, in fact, arbitrarily described as indigenous the people living in the Chittagong Hill Tracts in Bangladesh. Regarding the incident that had occurred there, he reiterated that his Government had initiated administrative and legal proceedings as recommended by its Judicial Inquiry Commission, and had replied in detail on the communications received through the Centre for Human Rights. Due process should be allowed to take its course, and politically motivated posturing should not be allowed to subvert the process.

47. The foregoing applied also to the statement made by the representative of Liberation, on which he would not comment further. The same speaker had, incidentally, spoken for the Asian Buddhist Conference for Peace, and in overtly militant terms. It was irrelevant to invoke article 49 of the Fourth Geneva Convention, and Bangladesh had on various occasions made its position clear on issues he had raised in connection with the Chittagong Hill Tracts.

48. It should be noted that, the speaker in both cases, who had unaccountably been accredited to represent two organizations and make two separate statements targeting the same country under the same agenda item, was in both instances speaking only on his own behalf. The Secretariat should look into the extent to which ghost non-governmental organizations and their ghost representatives were infesting the Sub-Commission's current session.

49. Mr. WADA (Observer for Japan), referring to the statement of the representative of the International Movement against All Forms of Discrimination and Racism, said that his Ministry of Justice had treated any cases of discrimination against the Ainu people as violations of human rights, and had also sought to re-educate those who had committed the specific acts of discrimination, as well as to conducting information activities in the surrounding area, in order to change the environment in which the discrimination had occurred.

50. The representative of the NGO had stated that a 1993 investigation by the Hokkaido prefectural government had shown that 42 per cent of Ainu people had claimed to have experienced discrimination at school: in actual fact, the inquiry cited had shown that only 7.3 per cent of the respondents had claimed to have had any recent experience of discrimination, 10.1 per cent had claimed to have known someone who had had such an experience recently, and 42 per cent only of those two categories of people combined had answered as indicated. It should be noted that in 1986 the ratio of Ainu people who had claimed to have personally experienced discrimination recently had been 23.1 per cent, as against the 7.3 per cent in 1993.

ELIMINATION OF ALL FORMS OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 12) (E/CN.4/Sub.2/1995/40 and 46)

51. Ms. SPALDING (Indigenous World Association) said that her organization had been approached by several indigenous groups which were concerned that sacred "spaces" traditionally connected with the religious beliefs and the very identity of indigenous people were increasingly at risk. Such spaces were being desecrated by industrial, business or tourist development in many parts of the world. The Australian Government, for instance, aware of the extraordinary importance of the matter to aboriginal women, had recently intervened to halt just such development on the ground of heritage protection, although the case was being appealed; a sacred Masai forest space was threatened by the demands of tourism; in the United States, a Western Shoshone Nation burial site was scheduled to be disturbed by use as a nuclear-test site.

52. The Sub-Commission must bear in mind that the protection of religious freedom at places of worship should extend to sacred "spaces", in order to ensure the fuller prevention of discrimination that was its solemn calling.

53. Mr. LACK (International Association of Jewish Lawyers and Jurists), observed that freedom of thought, conscience and religion, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, lay at the centre of the cluster of seven fundamental human rights and freedoms, and must remain inviolate at all times, even in times of national emergency.

54. It was clear, however, that the 27 situations reported the previous year, as compared with the 49 in the 1995 report of the Commission's Special Rapporteur on the question of religious intolerance (E/CN.4/1995/91) confirmed a sharp deterioration in the observance of the provisions of the Universal Declaration. His organization fully endorsed the Special Rapporteur's conclusion that religious extremism and intolerance were jeopardizing the right of individuals and peoples to peace and threatening all human rights.

55. Among the various regrettable incidents mentioned by the Special Rapporteur, the massacre of Muslim worshippers in a Hebron mosque had been the subject of immediate remedial action, including the appointment of a court of inquiry whose rigorous security recommendations for the protection of worshippers at the site had promptly been implemented in full. All responsible sectors of public opinion, both secular and religious, had unanimously condemned that heinous act. On the other hand, as the Special Rapporteur had also reported in part, Hamas militant extremists had conducted repeated bombing attacks against Jews, in crowded areas and with often heavy loss of life, in a patent attempt to wreck the Middle East peace process. Although committed in an essentially political context, such atrocities were connected with the growing phenomenon of religious extremism that was distorting the precepts of a major monotheistic religion, which the Hamas group falsely purported to represent. Its rhetoric actually called for the spilling of Jewish blood as an act of worship. The same group was responsible for the terrorist attack on an office housing Jewish institutions in Buenos Aires, a further example of the dangers of zealotry.

56. The threat posed by the resurgence of religious and racial intolerance had been under discussion for well over 30 years. It should not be forgotten in the year of the fiftieth anniversary of the end of the Second World War and of the creation of the United Nations that religious persecution resulting in a policy of deliberate genocide on a scale unprecedented in human history was the springboard from which the promotion and protection of human rights had developed. It would be a clear signal of hope to the world if the Sub-Commission recommended that the Commission should convene a sessional working group at an early date to draft an international convention converting the body of principles of the Universal Declaration into binding norms. Non-governmental organizations could contribute effectively to the process.

57. Mr. PANDITA (International Movement Against All Forms of Discrimination and Racism) said that the Pandits of Kashmir, a 2-per-cent minority in the Indian state of Jammu and Kashmir, had for the last six years been living in forced exile because of their unwillingness to accept the theocracy with which the religion-based separatists in Kashmir wanted to replace the existing secular and democratic system.

58. He wished to inform the Sub-Commission of one representative instance of religious intolerance. In 1994, armed theocratic separatists had fired on the annual procession of Hindu pilgrims to the cave shrine of Armarnath, which had been sacred to the Shivite sect from time immemorial, and killed two pilgrims. During the 1995 pilgrimage, a terrorist group sought to ban it, and as a warning, set off an explosion in a busy market in Jammu, killing 17 and wounding hundreds. Other terrorist groups had occupied and desecrated other shrines in Kashmir. Pilgrims were messengers of peace, bullets should not be their reward.

59. Such acts of intolerance based on religion and belief could happen anywhere in the world. Issues of discrimination against religious minorities and violation of their human rights had been raised by a number of speakers, and his organization shared their concern.

60. Mr. VITTORI (Pax Christi International) said that internationally recognized rules of ethics seemed less and less to condition the behaviour of communities towards each other, while governments showed hypocrisy and a lack of courage in the face of crying injustices and even intolerable atrocities. Yet it was paradoxical that religions and the cultures they informed should be the driving force behind barbarous confrontations, or at least that they should be used as their justification. It raised serious questions when the great religions were incapable of preventing horrible massacres even among their own faithful - as in the Islamic Republic of Mauritania or, more recently, in Christian Rwanda. State atheism provided no answer, for in the Soviet Union and the satellite States it had shown itself to be the death of liberty. Nor had the secular State inherited from the French Revolution been immune to inadmissible sectarian outrages. As for science without conscience, it was positively terrifying.

61. Some had sought escape in hedonism or drugs, or had plunged into religious extremism which threatened to turn into terrorism, as in Algeria. Cults, attracting even scientists, as had happened recently in the United States, Switzerland and Japan, had committed bloody aberrations. A conscious thirst for the spiritual was perhaps the only chance of survival for civilization in the twenty-first century.

62. Pax Christi believed that all religions, and particularly the three great monotheistic religions, must give deep thought to what constituted their intangible nucleus, stripped of historical accretions and past hatreds, so that they could transmit a liberating religious message that did not convey mental inhibitions engendering prejudices, or a rejection of otherness and ultimately intolerance. The insidious seed of intolerance must be exposed and its roots identified.

63. The United Nations had neither the mandate nor the competence to intervene in religious dogmas, but States could, in conformity with international standards of human rights, take all necessary measures to combat hatred, intolerance and acts of violence, intimidation or coercion motivated by religious extremism, and encourage understanding, tolerance and respect in matters relating to freedom of religion and belief, as advocated in paragraph 7 of Commission resolution 1995/23. Yet even that was not enough. States practising intolerance and discrimination would never take steps

against themselves; and what was more, the international community easily reached an accommodation with the religious intolerance of wealthy States.

64. An approach at a different level was needed, and Pax Christi renewed the proposal submitted together with several Jewish, Muslim and Christian non-governmental organizations the previous year, in which it had asked the Sub-Commission to invite the relevant special rapporteurs to highlight the connections between the violations ascertained in each country they considered and the local cultural habits that contradicted human rights standards; and to set up a study group of human rights experts, scientists and eminent representatives of social and theological thinking, which would highlight deviant religious teaching that could unbalance children and obscure their understanding of others different from themselves and keep them, once they were adults, from an awareness of the universal nature of human rights.

65. Mr. VO VAN AI (International Federation of Human Rights Leagues) said that his organization and the affiliated body, the Vietnamese Committee for the Defence of Human Rights, wished to draw attention to the policy of religious repression in the Socialist Republic of Viet Nam. Religious freedom was a non-derogable right enshrined in the International Covenant on Civil and Political Rights, to which Viet Nam was signatory.

66. The most recent attack on the Unified Buddhist Church of Viet Nam had caused particular concern. A trial in Ho Chi Minh City on 15 August had resulted in sentences of up to five years' imprisonment for four members of the Buddhist clergy, namely, Thich Quang Do, Thich Khong Tanh, Thich Nhat Ban and Thich Tri Luc, as well as two Buddhist lay persons, Mr. Nhat Thuong and Mrs. Dong Ngoc. The Venerable Thich Quang Do, Secretary-General of the Unified Buddhist Church, had been arrested on 4 January 1995. The other accused had been arrested in November 1994 for organizing an aid mission to the victims of the floods in the Mekong Delta. The authorities continued to deny any knowledge of their arrests. The accused had been presented as criminals and effectively condemned in advance. Called only by their lay names, the monks had not been allowed to wear their religious robes although the trial took place in camera. The accused had had no access to legal counsel of their choice, the French lawyers appointed by their church having been denied visas. During the trial, they had been unable to defend themselves beyond giving replies of "yes" or "no" to questions. Both the monks and the lay persons had been sentenced on the grounds that they had sabotaged the State policy of religious solidarity and taken advantage of liberty and democracy to harm the interests of the State and its social organizations.

67. In the case of the Venerable Thich Quang Do, that had meant writing a critical letter to the Secretary-General of the Communist Party, the name of his church displaying on his pagoda and sending two fax messages abroad protesting against the repressive measures taken against his aid mission. The indictment suggested a deliberate intention on the part of the Government to suppress a non-violent religious movement. It should be recalled that the authorities, having first denied any knowledge of the arrest of the Patriarch Thich Huyen Quang on 29 December 1994, had subsequently announced that he would be put on trial on similar charges.

68. The list of citizens, humble or eminent, who had suffered persecution for exercising a legitimate right to expression and belief guaranteed by the Vietnamese Constitution and by the International Covenant, was a long one. It could not fail to suggest a deliberate policy, since denounced by Mr. Do Trung Hieu, in a document written in May 1994 entitled The Unification of Vietnamese Buddhism. In that document, Mr. Hieu had shown that the Communist Party, fearing competition from the church, had attempted to neutralize it by transforming it into a puppet of the Party. Mr. Hieu had been subsequently arrested on 14 June 1995 in Ho Chi Minh City.

69. The systematic repression was taking place despite the willingness by the Unified Buddhist Church of Viet Nam to act in cooperation in religious matters with the State church and despite the fact that 49 dignitaries of the State Buddhist Church had signed a petition demanding the immediate release of Patriarch Thich Huyen Quang.

70. The International Federation of Human Rights Leagues and the Vietnamese Committee for the Defence of Human Rights therefore urged the Sub-Commission to take appropriate action to prevent irreparable harm being done.

71. Mr. LITTMANN (International Committee for European Security and Cooperation) said that Mr. Eide had raised one particular human rights issue which had been consistently neglected, namely, that of "religious cleansing". In 1790, Edmund Burke had uttered a warning in his Reflections on the Revolution in France (1790) on the misuse of the term "liberty", and stated that liberty without wisdom was "folly, vice and madness, without tuition or restraint". How prophetic that warning now seemed. More than two centuries after Burke, the world was witnessing acts of ethnic or "religious cleansing" committed by people who voiced high-sounding words about human rights and religious liberty. The working paper by Mr. Ramadhane on the question of human rights and terrorism (E/CN.4/Sub.2/1995/9) had come a quarter of a century after the emergence of air piracy, hostage taking and international terrorism as a ruthless, mediatized system, whereby privileged groups of "freedom fighters" justified their liberty to kill their enemies on national or religious grounds. Many such acts were carried out by committed Islamists whose ideology of "holy struggle" favoured international terrorism as a means of achieving their goals.

72. The world was now paying a heavy price for failing to outlaw persons who committed or participated in such international crimes. Indiscriminate terror committed against innocent civilians and justified by religion had become commonplace. While the Islamic Republic of Iran had condemned the recent bomb attack in Paris, it had reiterated Khomeini's 1990 fatwah against Salman Rushdie and had praised the "Islamikaze" bombing in July 1995 of a bus near Tel Aviv, the work of Hamas - an organization thought by many to be backed by Iran whose Covenant was a blueprint for genocidal religious cleansing. His organization therefore urged the Sub-Commission to adopt an urgent declaration condemning the recent bombings in Paris and Jerusalem, along the lines of the recent declaration on hostage taking and murder of hostages which had condemned the use of such contemptible and barbaric methods for political gain.

73. Such religious extremism was a perversion of Islam, a religion which, in the words of Prime Minister Benazir Bhutto of Pakistan, taught "affection, tolerance and brotherhood" and had "no place for terrorism and sectarianism".

74. The 1993 Vienna Declaration and Programme of Action had strongly condemned all acts of genocide and "ethnic cleansing". Why then was there such general reluctance to use the term "religious cleansing", a term which so aptly described what had actually occurred over the centuries, and continued to occur in many regions of the world? The Sub-Commission draft resolution on prevention of incitement to hatred and genocide, particularly by the media (E/CN.4/Sub.2/1995/L.13), though opportune, had omitted an important aspect regarding the former Yugoslavia, namely, any reference to the Order of 13 September 1993 of the International Court of Justice. What could explain the silence surrounding the "religious cleansing" of 200,000 Orthodox Serbs from their ancestral homeland by Roman Catholic Croats? Who had been willing to speak out about the many other examples of religious cleansing in other parts of the world? It was time for the international community to heed the forgotten voices of religious minorities worldwide who had suffered victimization, including the Rohinga Muslims of Mynamar, the Ahmadiyas or Christians of Pakistan, the Hindus of Pakistan and Bangladesh, the Pandits of Kashmir, the Baha'is of Iran, or the animists and Christians of the Sudan. Nor should the fate of the "forgotten" million Jews deported from Arab lands since 1948 be forgotten. In Iraq, an extermination campaign against the Kurds had been named after a Sura of the Koran concerning non-Muslims, similar justification being invoked for the treatment of the Yezidi community who were still confined in their thousands to concentration camps near their ancestral villages. His organization called for the Sub-Commission to examine the tragedy of the Yezidis as a matter of urgency.

75. A fundamental teaching of the Jewish faith throughout the ages had been "Don't do to others what you would hate to be done to you". It was a teaching which we should all bear in mind when demanding human rights and religious liberty.

76. Mr. PERERA (World Federation of United Nations Associations) said that the right to freedom of religion and belief enshrined in article 18 of the Universal Declaration of Human Rights could be fully exercised only if everyone enjoyed freedom of opinion and expression, freedom of information, freedom of peaceful association and the right to participate in the government of one's country through freely chosen representatives. Freedom of religion and belief were often the most difficult to achieve, since to many people, religious beliefs were based on deeply held convictions which made it difficult to empathize with, or even to be tolerant of, those whose beliefs were different. Nevertheless, it was precisely that kind of understanding and tolerance which article 18 demanded.

77. Many of the rights implied in article 18 were spelled out in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Like all rights, they implied duties and responsibilities. For example, the implied right to establish and maintain places of worship carried with it an obligation to respect the right of others to do the same. The right to disseminate publications, particularly concerning religions and beliefs other than one's own, similarly imposed an

obligation to do so in a spirit of understanding and tolerance. The right to teach a religion should be exercised without derogatory references to other faiths, and indeed should aim to promote an appreciation of the spiritual values of those other faiths. The right to establish and maintain educational or charitable institutions did not imply the right to exert pressure on the beneficiaries to convert to the religion of the establishments' owners and directors. The need to ensure recognition of the rights and freedoms of others, and the legitimate requirements of morality, public order and welfare, were the sole justification for legal limitations on the rights and freedoms set out in the Declaration.

78. Only through unreserved respect for the rights enshrined and implied in article 18 of the Universal Declaration would it be possible to eliminate intolerance and discrimination based on religion or belief.

79. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education) recalled that in 1993, an international meeting of experts acting under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) had drafted a declaration on tolerance which would shortly be submitted to the General Assembly.

80. The declaration noted that people needed convictions but were also called upon more than ever before to develop a feeling of solidarity with others and to ensure that their convictions did not result in the exclusion of others. It emphasized the need to recognize that all people were equal in dignity while differing from each other in their talents, convictions and beliefs and that such differences could enrich individuals and civilization as a whole if all citizens were able to participate in the political, cultural, economic and social life of their society.

81. One important aspect of the declaration was its emphasis on the fact that tolerance and respect for others was not incompatible with convictions. Tolerance did not mean neutrality or indifference, and deeply-held convictions did not inevitably imply intolerance or rejection of dialogue. Indeed, without clearly defined identities and the willingness to recognize the identity of others, no dialogue was possible. Education in tolerance, as UNESCO had also recognized, began with the recognition of the right to an identity.

82. Another important aspect of the UNESCO declaration was its recognition that diversity and pluralism of cultures was a great resource. Diversity was the source of social progress and of the renewal of societies and ideas; without it, there were no alternatives and no aspiration. Intolerance could not be allowed to stifle that spirit of pluralism and deny the world its potential benefits. At the same time, a free and pluralist system demanded equal opportunities for all and help for the weakest, as well as effective participative mechanisms to allow everyone to express themselves.

83. Now more than ever, the international community needed to promote collaboration between people to solve the problems it now faced. Humanity needed what the UNESCO declaration had referred to as the vision of peaceful coexistence between human beings, between ethnic groups and religions. For that reason, every effort was needed to protect and promote pluralism

everywhere. That would include efforts to ensure the proper integration of young people in society which did not simply involve putting pressure on them to conform to the group. Education should not be conceived merely as a way of encouraging conformity to a given social model, which had already been shown in many societies to be ineffective.

84. The promotion of pluralism was not incompatible with the search for common values and convictions. Indeed, the two things were complementary and equally vital if real tolerance was to be established. The twentieth century had seen the establishment of an instrument which had brought together the ideals of many different cultures, religions and truths, namely, the Universal Declaration of Human Rights. Understanding human rights in terms of different cultures not only did not weaken them, but would allow us all the better to understand what they really meant.

85. The fundamental human condition was something common to all of us, irrespective of cultural, religious or racial differences. As the UNESCO declaration said, pleas for tolerance would remain a dead letter if at national and international levels nothing effective was done to ensure equitable representation and opportunities for free discussion. Furthermore, tolerance had to be based on pluralism in discussion, in sources of information and in training opportunities. That pluralism, like democracy itself, was a fragile plant and there was always the danger of a feeble consensus or a stifling unanimity.

86. Mr. AHLUWALIA (Liberation) said that the various forms of intolerance and discrimination based on religion would be eradicated only if human beings learned to deploy their resources of compassion and forgiveness. The message of various religions was clear, and imposed a particular duty on their practitioners not to allow those beliefs to become twisted to serve political objectives. On the other hand, signs of religious intolerance could be provoked by political interference in purely religious matters. Such interference was particularly evident in Bangladesh, Viet Nam, India and Tibet.

87. Liberation particularly regretted recent remarks in the Sub-Commission by the observer for China to the effect that recognition by the Dalai Lama of the eleventh Panchen Lama was a violation of traditional rites and customs. Such defamation of the spiritual leader of millions of Buddhist people, including those from Tuva in the Russian Federation and countries like Mongolia, Taiwan and Bhutan, was simply not acceptable. The representative of China had also claimed that the Dalai Lama's proclamation was contrary to Buddhist practice. That was untrue, and the authority of His Holiness in religious matters must be considered absolute. The Government of China could only show its respect for the religious tradition of Tibet by releasing the young Panchen Lama from house arrest.

88. In the Chittagong Hill Tracts area in Bangladesh, religious freedom had virtually ceased to exist. Settlers had destroyed temples and churches of all the major faiths - Christianity, Buddhism and Hinduism - and defiled holy areas. The removal of the settlers and the armed forces from the area was an essential first step towards allowing the local inhabitants once again to practise their religions freely.

89. In India, members of the Sikh community continued to suffer interference in the management of their holy shrines. Sikhs believed that international recognition of their religion and the sovereignty of the Akal Takt of the Golden Temple was essential if their faith was to be protected.

90. In conclusion, he asked both the United Nations High Commissioner for Human Rights and the Sub-Commission to give serious consideration to the problems he had described.

91. Ms. SHEA (Freedom House) said that religious freedom in one sense was the starting point of all human rights. Its denial violated the most private sanctuary of individual consciousness. A State which denied religious freedom would also be likely to deny the freedom of expression, assembly and association as well.

92. Freedom House wished to draw attention to the continued banning of the Roman Catholic Church and private Protestant worship in churches not approved by the Government in China. In the spring of 1995, a national crackdown had resulted in the arrest of nearly 140 evangelist protestants in Henan Province. According to some reports, the Fancheng Public Security Bureau had issued national arrest warrants for some of the best known preachers and at least a third of the evangelists arrested were still being held in detention without charge. The crackdown was said to be related to the assertion by President Jiang Zemin at a meeting in 1994 that religion was one of the biggest threats to Communist Party rule in China.

93. On or around Easter Sunday in 1995, approximately 30 lay Roman Catholic leaders had also been arrested by the Fuzhou Security Bureau. Most had since been released, but 4 had received prison sentences of up to 5 years and 13 other lay leaders and 1 nun had been forced to pay a fine equivalent to three months salary before their release. Many of the detainees had been severely beaten and two lay women in particular had been so severely beaten that they could not feed themselves. Many of the lay leaders were from the Roman Catholic congregation which had held an Easter prayer meeting on the summit of Yujashan Mountain, which had been attended by nearly 20,000 Catholics. Freedom House had the names of 37 Christian women imprisoned or under close police surveillance in China.

94. In Sudan, the Puebla Institute had received overwhelming evidence that children, many of whom had been living with family members, had been abducted from public places in major towns by Government agents and taken to juvenile camps. The children, mostly Christian or animist boys, and some as young as six, had described being abducted by police and smuggled out of the city to high security closed camps in remote areas. Once incarcerated, they had been given Arab names, indoctrinated in Islam and forced to undergo military-style training. Within the camps, vocational training was little in evidence, disease rampant and food nutritionally deficient and scarce. The children were forced to live in conditions of extreme neglect and some were subjected to physical abuse. The Government refused access to international relief and church groups seeking to provide assistance to the children. Many reports had been received that the boys were eventually pressed into military combat.

95. The continuing religious persecution of the Baha'i minority community in Iran was another source of deep concern to Freedom House. Members of that community continued to be denied their legal rights solely on the grounds of their religious affiliation.

96. In Viet Nam, members of the indigenous Catholic community, Protestants in remote tribal communities and virtually the entire leadership of the Independent Buddhist Church had been imprisoned or were suffering other forms of persecution, despite the economic liberalization of the country.

97. Freedom House respectfully urged the Sub-Commission to consider all those cases of religious persecution.

98. Mr. FAN Guoxiang said that he was disturbed by the shaky factual basis of two statements made by non-governmental organizations. Those statements, in referring to Taiwan and Tibet as countries and referring pointedly to the Communist Party rule in the People's Republic of China, had attempted to politicize the discussion on religious freedom in an unacceptable way.

99. The CHAIRMAN said that the Sub-Commission had now completed its discussions on agenda item 12.

100. Mr. NGUYEN VAN SON (Observer for Viet Nam), in a statement equivalent to a right of reply, said that a number of allegations made by previous speakers under agenda item 12 had distorted the policies of his Government and created a false impression of the situation of religious freedom in his country. Throughout its long history, Viet Nam had been faced with the problem of preserving national unity which was a matter of survival. That had meant not simply preserving unity between different ethnic groups but also to create a wider union without distinction of opinion, belief or religion.

101. Viet Nam was a country in which a multiplicity of religions coexisted. About a third of the population, or 20 million people, were adherents of one or other of those religions and were fully integrated into the life of the country, having contributed greatly to the country's regaining its independence and subsequent reconstruction efforts. Buddhism, with 10 million adherents, was more than just a religion for the Vietnamese; it was part of their national culture. Vietnamese Buddhists were devoted to their country, and the Government had no reason to pursue a policy of discrimination against them or any of the other religious groups. Indeed, freedom of religion was enshrined in the Constitution and respected and implemented in practice. The Vietnamese Government was more aware than ever of the need to respect freedom of belief and religion in order to strengthen national unity and create a prosperous and advanced society.

102. Nevertheless, certain discordant voices could always be heard, originating from outside the country, blaming the authorities for all kinds of evils. The falsification of facts and the disparagement of any success betrayed the origin and character of those who made such attacks. They were for the most part former collaborators with the old regime in the south now living abroad. It was important to understand that Viet Nam continued to draw a clear distinction between freedom of religion and law breaking, and believed

that human rights could never be used as a means to political ends or subversion by those who still dreamt of the privileged existence they once enjoyed under the old regime.

103. The Government of Viet Nam remained faithful to the values and traditions of its people and would continue its judicious policy of implementing the rights of people who belong to national, ethnic, religious or linguistic minorities as the foundation of its overall strategy for creating national cohesion and reconstructing the country.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued)

Draft resolution E/CN.4/Sub.2/1995/L.5/Rev.1

104. Mr. BOSSUYT, introducing the draft resolution, said that in drafting the revised version he had attempted to take account of the comments and suggestions of co-authors and other colleagues and hoped that it would be adopted by a majority. He felt obliged to draw the Sub-Commission's attention to the statement by the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran to the effect that cooperation by the Iranian authorities with the Special Representative had declined in the last two years.

105. Mr. KARIMIAN (Observer for the Islamic Republic of Iran), in a statement equivalent to a right of reply, said that the draft resolution in question overlooked the honest efforts which were being made by the Government of his country to solve its problems in various fields, including human rights. While not wishing to claim that it was a perfect society, the authorities were doing their best and might achieve far greater success if his country's enemies would leave it alone to solve its problems.

106. The text of the draft resolution was deeply unfair and selective. It was not based on a variety of sources, and in its tone and wording went far beyond that of the report submitted to the Commission at its fifty-first session by the former Special Representative of the Commission on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1995/55). It also overlooked the fact that the Iranian Government had on three occasions invited the Special Representative to visit the country, as well as inviting two of the thematic rapporteurs. It also had good relations with all the other thematic rapporteurs.

107. Constraints of time meant that he could only give a few specific examples of the text's unfairness and willingness to cite unsubstantiated allegations. He noted that the ninth preambular paragraph cited allegations that the Iranian embassy in Germany was "actively spying on Iranian refugees in that country". That allegation had come from a report published on 26 June 1995 in the International Herald Tribune, and had been refuted by an official report

produced by the German Ministry of Foreign Affairs. In the thirteenth preambular paragraph, attention was drawn to the alleged role of the authorities in intimidating and harassing religious minorities. The allegation appeared to lack any reasoned foundation or logic. It was significant that the report of the Special Representative, while recommending that the Government should be asked to investigate the murders and prosecute the perpetrators, had also stated that not all the facts could be taken as substantiated. In fact, a report which the Islamic Republic of Iran had just sent to the Centre for Human Rights had indicated very clearly that the judicial authorities had immediately carried out a thorough investigation into the assassination of two pastors and the perpetrators had been brought to justice. The trial had been attended by numerous local and foreign journalists and by representatives of various countries.

108. Turning to the implication, in operative paragraph 2 that the Government of the Islamic Republic of Iran had been involved in "murder and State-sponsored terrorism against Iranians living abroad and the nationals of other States", he noted that according to the report by the Special Representative, allegations of such involvement had never been substantiated and had not been included in the conclusions of the report.

109. With regard to operative paragraph 8, he said that there was no significant Arab minority in the Islamic Republic of Iran.

110. It should be made clear, once and for all, that Baha'ism was not a religion but a cult. It was an insult to all devout Muslims, Christians and Jews that the founder of Baha'ism had claimed to be the only God and that anyone who disobeyed him should be considered a rebellious pagan whose blood might be spilled in certain areas of the Middle East where nobody but Baha'is had the right to reside.

111. Unfortunately, most of the content of the draft resolution was based on reports from a Baghdad-based Marxist terrorist gang that was reported by several Western sources to be paid to engage in terrorism in the Islamic Republic of Iran and other countries. It actually took pride in having murdered thousands of individuals.

112. The Islamic Republic of Iran was doing its best and requested the experts of the Sub-Commission to be fair and objective in their judgement, not to allow mountains to be made out of molehills in human rights matters, and to vote against the draft resolution.

113. Mr. BOSSUYT said that he was pleased to note that the observer for the Islamic Republic of Iran had indicated his Government's desire to cooperate with the new Special Rapporteur. He hoped that such cooperation would be better than that proffered in the case of the previous Special Rapporteur.

114. Mrs. CHAVEZ observed that the specific attack on the Baha'i religion had been most unfortunate, since it was not for the Iranian Government to decide the religious beliefs of individuals or who in those beliefs was to be considered to be God and who was not.

115. A vote was taken by secret ballot.

116. At the invitation of the Chairman, Mr. El-Hajjé and Mr. Khalil acted as tellers.

117. Resolution E/CN.4/Sub.2/1995/L.5/Rev.1 was adopted by 13 votes to 7, with 2 abstentions.

Freedom of movement

(a) Situation of migrant workers and members of their families;

(b) Population displacements

(agenda item 18) (continued)

Draft decision E/CN.4/Sub.2/1995/L.58

118. Draft decision E/CN.4/Sub.2/1995/L.58 was adopted without a vote.

Implications of humanitarian activities for the enjoyment of human rights (agenda item 19) (continued)

Draft resolution E/CN.4/Sub.2/1995/L.39

119. Mrs. WARZAZI drew attention to two amendments which the co-sponsors had accepted. The first was the incorporation of a new preambular paragraph reading: "Bearing in mind that the work carried out at the United Nations Conference on Development and Environment, held in Rio, the Human Rights Conference in Vienna, and the World Summit on Social Development in Copenhagen, in particular, has represented considerable progress in the respective areas with regard to the work of the United Nations, as well as the importance which the humanitarian activities carried out by the United Nations Organization have acquired, and which require better planning and coordination,". The second concerned a new paragraph 2 reading: "Draws the attention of the Member States of the United Nations to the opportunity and importance of organizing in the near future a World Summit on Humanitarian Assistance, in order to strengthen their development and to better coordinate their action in this field.".

120. Mrs. MBONU proposed the addition of a final preambular paragraph reading: "Taking note of Commission on Human Rights decision 1995/107 of 3 March 1995 and the expressed need for the Sub-Commission to avoid making judgements on issues that are within the responsibility of other United Nations bodies,".

121. Draft resolution E/CN.4/Sub.2/1995/L.39 was adopted without a vote.

International peace and security as an essential condition for the enjoyment of human rights, above all the right to life (agenda item 13) (continued)

Draft resolution E/CN.4/Sub.2/1995/L.22 and amendments thereto in document E/CN.4/Sub.2/1995/L.29

122. Mr. BENGOA, introducing the draft resolution, expressed his appreciation of the broad support that had been received from groups in Polynesia and from Governments. In drafting the text, the sponsors had been careful not to exceed the bounds of human rights. References were made, not to disarmament, but to the consequences of nuclear testing for populations, especially indigenous populations, of which there were many in the Pacific. The special rapporteur, in order to protect their rights, would have to be an expert, not on armaments or the environment, but on human rights. The well-intentioned amendments that had been submitted concerning the inclusion of references to all nuclear tests, including those that had taken place many years previously, and to toxic wastes and the environment, were not acceptable to the sponsors because they would dilute the essential message. No discrimination was intended: to cover all possible situations would have required an enormously long text which would have been of very little practical value.

123. Mr. HATANO said that he was fully aware that nuclear tests per se were a political issue and as such not within the Sub-Commission's mandate. However, in so far as nuclear tests involved the violation of human rights they could fall within that mandate, especially when the health and lives of foreign peoples and indigenous populations were at risk rather than the health and lives of the inhabitants of the country conducting the tests. That was the only reason why France alone had been referred to and why Mrs. Koufa, the alternate to Mrs. Daes, who had long been Chairperson of the Working Group on Indigenous Populations, and he, who had been a member of that Working Group since 1990, had become sponsors of the text originally proposed by Mr. Bengoa, who came from a Pacific Ocean country that would be affected by the tests.

124. Mr. GUISSE expressed doubt as to whether the Sub-Commission was competent to consider such a draft resolution. Other United Nations bodies were considering nuclear matters, and if the Sub-Commission was to retain its credibility it should not encroach on areas covered by other United Nations mechanisms. In a very broad sense, all human activities had consequences for human rights; but the Sub-Commission was not competent to deal with nuclear affairs. The appropriate experts capable of assessing what the consequences of the tests would be were to be found elsewhere. Indeed, if the Sub-Commission were to consider the damage done by nuclear tests, it should also consider the effects of nuclear accidents such as that which had taken place at Chernobyl. In any case, nuclear tests should be banned for everyone and everywhere, and it was wrong to single out one particular State. He therefore requested that no mention should be made of any country in the draft resolution, whose scope should be universal.

125. Mrs. PALLEY, introducing her amendments contained in document E/CN.4/Sub.2/1995/L.29, said that she believed that all nuclear explosions and tests that had long-term adverse effects on human beings lay within the Sub-Commission's mandate. In her first amendment she had thought it right to recall the historical background to nuclear tests in which indigenous and

other peoples had certainly been harmed in, for example, Australia and the central part of the former Soviet Union. But it was not merely a question of the effects on indigenous peoples or on peoples in the Pacific region. Her concern was for the whole of mankind. Since funds were limited, she was proposing that the Commission on Human Rights, instead of appointing another special rapporteur, should extend the mandate of its Special Rapporteur on toxic wastes and the environment to include the study of the effects of nuclear tests.

126. In her opinion it was quite wrong to single out the named State at a time when other States had just engaged, or were about to engage, in similar conduct. She was therefore proposing a second new preambular paragraph concerning China. Since she had drafted the text, China had conducted another test. Accordingly she wished to add to her amendment the words "and again on 17 August 1995". She was also proposing the insertion of a text referring to China in the existing third preambular paragraph, where the words "two nuclear tests" would be replaced by the words "another nuclear test". It was utterly amazing that the Sub-Commission could have contemplated naming France without naming China, both of which were planning to conduct harmful tests.

127. Mrs. MBONU said that she disagreed with Mr. Guissé. Four or five years previously, the Sub-Commission had been criticized for taking up the issue of toxic wastes, but it had been proved to be right. In the case of nuclear tests, it was wrong for a civilized country to conduct such tests in an area inhabited by indigenous peoples rather than to do so at home.

128. Mrs. WARZAZI said that although the draft resolution went a little beyond the Sub-Commission's mandate, she would feel obliged to vote in favour of it because it sought to protect the right to life. She had, however, two amendments to make. In the first place, at the end of the third preambular paragraph she wished to add the words "contrary to the appeals made by the international community, which considered that the resources stemming from disarmament should be devoted to the development of all countries, especially developing countries". In the second place, in paragraph 5 there was no need to request the Commission on Human Rights to appoint a special rapporteur, since the Government of France had stated that it would end its nuclear testing in May 1996. She would therefore like the paragraph to be reworded to read: "Requests the Commission on Human Rights to appoint a special rapporteur to study in the field and monitor the effects and consequences of nuclear tests on the civilian populations living in the areas where they take place, particularly as regards their life, health and environment." Mrs. Palley's amendments went perhaps too far, but she could vote for the first of them.

129. The CHAIRMAN announced that consideration of the draft resolution would be resumed at the next meeting.

The meeting rose at 1.10 p.m.